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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

MICHELLE KENDIG and JIM
KENDIG, individually and on behalf
of all similarly situated current and
former employees,

Plaintiffs,

v.

EXXONMOBIL OIL CORP.;
EXXONMOBIL PIPELINE
COMPANY; PBF ENERGY
LIMITED; TORRANCE REFINING
COMPANY, LLC; and DOES 1
through 10, inclusive,

Defendants.

Case No.: 2:18-cv-9224 MWF (SSx)

Assigned to Hon. Michael W. Fitzgerald

**NOTICE OF MOTION AND MOTION
FOR PRELIMINARY APPROVAL OF
SETTLEMENT AGREEMENT;
DECLARATIONS OF COUNSEL; AND
EXHIBITS**

DATE: April 13, 2020
TIME: 10:00 a.m.
PLACE: Courtroom 5A

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1 PLEASE TAKE NOTICE that on April 13, 2020, at 10:00 a.m., in Courtroom
2 5A, Plaintiffs Michelle Kendig and Jim Kendig, individually and on behalf of all
3 similarly situated current and former employees (collectively, "Plaintiffs"), will and
4 hereby move this Court for entry of the proposed order filed concurrently herewith:

5 1. Preliminarily approving the class action settlement for \$4,391,585;

6 2. Preliminarily and conditionally certifying the class for purposes of
7 settlement;

8 3. Preliminarily appointing Plaintiffs Michelle Kendig and Jim Kendig as
9 class representatives for purposes of settlement;

10 4. Preliminarily appointing Hadsell Stormer Renick & Dai LLP and Gilbert &
11 Sackman, A Law Corporation, as class counsel for purposes of settlement;

12 5. Preliminarily approving the application for payment to class counsel of
13 reasonable attorneys' fees of up to \$1,097,896 (25% of the common fund) and
14 reasonable costs up to \$30,000;

15 6. Preliminarily approving the payment of an "incentive award" in the amount
16 of \$7,500 to each of the two class representatives;

17 7. Approving as to form and content the Proposed Notice of Class Action
18 Settlement;

19 8. Directing that the Notice of Class Action Settlement be mailed to the
20 Settlement Class members; and

21 9. Scheduling a fairness hearing on the question of whether the proposed
22 settlement should be finally approved as fair, reasonable, and adequate as to the
23 members of the Settlement Class.

24 This motion is brought pursuant to Federal Rule of Civil Procedure 23 on the
25 grounds that the Settlement is fair, reasonable, and adequate, and that all requirements
26 for class certification have been met.

27 This motion is based upon this Notice, the Memorandum of Points and
28

1 Authorities submitted herewith, the Declarations of Randy Renick and Joshua Young
2 and exhibits filed herewith, the other records, pleadings and papers filed in this action,
3 and upon such other documentary and oral evidence or argument as may be presented to
4 the Court at the hearing on this motion.

5 DATED: March 16, 2020

6 Respectfully submitted,

7 HADSELL STORMER RENICK & DAI LLP

8 /s/Randy Renick

9 Randy Renick

10 Attorneys for Plaintiffs Michelle Kendig and Jim
11 Kendig

12 GILBERT & SACKMAN,
13 A LAW CORPORATION

14 /s/Joshua F. Young

15 Joshua Young

16 Attorneys for Plaintiffs Michelle Kendig and Jim
17 Kendig
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1 **I. INTRODUCTION**

2 Plaintiffs Michelle Kendig and Jim Kendig (collectively, “Plaintiffs”) seek
3 preliminary approval of the proposed class action settlement (“Settlement”). Attached
4 as Exhibit 1 to the Declaration of Randy Renick filed concurrently herewith is a true and
5 correct copy of the Joint Stipulation of Class Action Settlement and Release.

6 Plaintiffs further seek conditional certification for purposes of settlement of the
7 following class: all current and former non-exempt hourly employees holding an
8 Operator position while employed by ExxonMobil Oil Corporation, ExxonMobil
9 Pipeline Company, PBF Energy Limited, and/or Torrance Refining Company LLC, or
10 any of their affiliates, working at the Torrance refinery, distribution and pipeline
11 facilities in the state of California, County of Los Angeles, at any time during the time
12 period beginning September 18, 2014 and ending on the date of Preliminary Approval.

13 Subject to final approval of this Court, the parties have agreed to settle this action
14 on an all-cash, non-revisionary basis for \$4,391,585 (the “Settlement Fund”).
15 Specifically, Defendants ExxonMobil Oil Corp. and ExxonMobil Pipeline Company
16 (collectively, the “Exxon Defendants”) agreed to pay a total of \$1,491,372 and
17 Defendants PBF Energy Limited and Torrance Refining Company LLC (collectively,
18 the “TORC Defendants”) agreed to pay a total of \$2,900,213. Furthermore, in addition
19 to their proportionate share of the Settlement Fund, each Defendant will pay the
20 employer’s share of any payroll taxes, including FICA and FUDA.

21 Before settlement, Plaintiffs conducted extensive investigations of Defendants’
22 wage and hour practices at their Torrance refinery, particularly in regard to the provision
23 of rest breaks. The investigation included interviews of Operators and review of
24 relevant written materials, including workplace manuals, emergency procedures, rules
25 and employee handbooks. In addition, Defendants provided, and Plaintiffs reviewed
26 Defendants’ payroll and timecard data which included the exact number of shifts
27 worked by each class member during the class period and the specific pay rate which
28 applied to each of those shifts. This discovery was sufficient to allow Plaintiffs to

1 thoroughly evaluate liability and determine damages and provide a sufficient basis upon
2 which to obtain an outstanding settlement. The resolution was the result of arms-length
3 negotiations and a full day mediation session with T. Warren Jackson, a highly skilled
4 and experienced mediator.

5 Overall, the Settlement is an excellent result for the Settlement Class in light of
6 all the relevant circumstances. Accordingly, Plaintiffs respectfully request that the
7 Court grant preliminary approval of the Settlement and enter the proposed order filed
8 concurrently herewith.

9 **II. STATEMENT OF FACTS**

10 **A. Procedural Background**

11 On September 18, 2018, Plaintiffs filed their complaint against Defendants in
12 *Michelle Kendig et al., v. ExxonMobil Oil Corp.; ExxonMobil Pipeline Company; PBF*
13 *Energy Limited; Torrance Refining Company, LLC* in the Los Angeles Superior Court
14 (the “Complaint” in the “Class Action”).¹ The Complaint alleged the following causes
15 of action: (1) Failure to authorize and permit duty free rest periods; (2) failure to furnish
16 accurate wage statements; (3) the California Private Attorneys General Act; and (4)
17 unfair competition. Plaintiffs sought unpaid wages, statutory penalties, restitution,
18 attorneys’ fees and costs, interest, and injunctive and declaratory relief for the time
19 period from September 18, 2014 to the present. Declaration of Randy Renick (“Renick
20 Decl.”) at ¶3.

21
22 ¹ Gilbert & Sackman and Hadsell Stormer Renick & Dai have filed similar lawsuits
23 against: Chevron, *Clack v. Chevron Corporation*, Case No. BC649514, (Los Angeles
24 Superior Court, Judge Amy D. Hogue); Tesoro, *Valliere v. Tesoro Refining and*
25 *Marketing Co.*, 3:17-cv-00123 (Northern District of California, Judge Jon S. Tigar);
26 Phillips 66, *Buzas et al. v. Phillips 66*, Case No. 4:17-cv-00163 (Northern District of
27 California, Judge Yvonne Gonzalez Rogers); and Shell, *Berlanga v. Equilon Enterprises*
28 *LLC dba Shell Oil Products US, et al.*, Case No. 4:17-cv-00282-MMC (Northern
District of California, Judge Maxine Chesney). Final Approval of the \$5,500,000
Phillips 66 settlement was granted on March 8, 2018. Final approval of the \$7,750,000
Shell settlement was granted on January 22, 2019. Final approval in the *Chevron* matter
is pending. Preliminary approval in the *Tesoro* matter is pending. Declaration of Joshua
F. Young, ¶ 5.

1 On October 26, 2018, TORC Defendants removed the matter to the United States
2 District Court for the Central District of California, Case No. 2:18-cv-9224 MWF. On
3 February 1, 2019, Defendants answered the Complaint, denying each and all of the
4 claims alleged by Plaintiffs in the Class Action. Specifically, Defendants ExxonMobil
5 Pipeline Company and PBF Energy Limited deny that they, or either of them, have ever
6 employed operators at the Torrance Refinery. All Defendants deny that Operators at the
7 Torrance Refinery were or are required to carry radios or other communication devices
8 during their rest breaks. In addition, all Defendants deny that Plaintiffs, or any of them,
9 are entitled to interest on allegedly unpaid premium pay. Moreover, TORC Defendants
10 take the position that even if they, or either of them, were potentially liable on any
11 claim Plaintiffs have asserted, the Class Period ended September 20, 2018, when the
12 California State Legislature enacted Labor Code section 226.75 in response to *Augustus*
13 *v. ABM Security Services, Inc.*, 2 Cal. 5th 257 (2016), and supplied a limited exemption
14 to the “relieved of all duty” rest break mandate insofar as a refinery employer requires
15 an employee in a safety-sensitive position to carry an emergency communication
16 device, to remain on employer premises, to monitor communications, and/or to be
17 available to respond to emergencies. Furthermore, the TORC Defendants take the
18 position that notwithstanding the current conflict among California appellate courts,
19 missed rest periods and alleged failure to pay premium wages do not give rise to *penalty*
20 claims.

21 Both prior and subsequent to the filing of the Complaint, Plaintiffs conducted a
22 complete investigation of Defendant’s wage and hour practices with regard to rest
23 breaks so as to evaluate liability and damages. Plaintiffs reviewed extensive payroll and
24 timecard data which allowed Plaintiffs to accurately determine the total amount of
25 damages for which Defendants would be liable were Plaintiffs successful in their efforts
26 to certify the class and prevail at trial. Renick Decl., at ¶ 6.

27 On August 23, 2019, the Parties participated in mediation with T. Warren Jackson
28

1 in Los Angeles, California, and were able to reach a settlement of all claims. The
2 Settlement was ultimately reduced to a written settlement agreement and executed by all
3 parties. Renick Decl., Exhibit 1.

4 **B. Pertinent Factual Background**

5 **1. Operators Work on a Rotating Shift Schedule And Remain in**
6 **Constant Communication to Keep the Refineries Working**
7 **Continuously**

8 The Torrance Refinery operates continuously, 24 hours a day, seven days a week.
9 The oil refining process is a dangerous operation that involves hazardous substances and
10 has the potential for catastrophic consequences if something goes wrong. Because the
11 refining of crude oil is a continuous production process, Defendants need employees to
12 operate and/or monitor the process at all times; thus, Operators at the Torrance Refinery
13 work 12-hour rotating “continuous” shifts on four schedules.

14 There are 10 processing units at the Torrance Refinery, including the Tank Farm,
15 Oil Movements, Sulfur Recovery (SRU), Hydrotreater (HDT), Hydroprocessing
16 (HDC/PTR), Alkylation (ALKY), Utilities (UTL), Coker, Crude and Fluid Catalytic
17 Converter (FCC). Each unit has one Console Operator and one Head Operator except
18 for the Coker unit, which has two Head Operators.² Console Operators work together in
19 one room, a location separate from their units. They are responsible for monitoring
20 tank, tower, and oil levels, temperatures for equipment and refining processes, flow
21 levels, lubrication, and pressure readings for different processes and equipment, and
22 making adjustments to processes and equipment, as needed, from computer board
23 terminals.

24 Field Operators generally take direction from Console Operators and make
25 adjustments to the production process from the field. Thus, Console Operators and

26 ² In addition to the basic responsibilities of an Operator, a Head Operator has additional
27 operational and administrative duties, including maintenance backlog, monitoring
28 reliability, conducting regular safety meetings, conducting emergency drills, and
monitoring training of individual Operators in his or her unit.

1 Field Operators must coordinate their activities to ensure that the refining process
2 operates safely and efficiently. Field Operators are also responsible for monitoring
3 equipment with readings that do not have a signal to the console. In addition, they must
4 be available to contractors working in their units and provide them with work direction
5 as well as other assistance.

6 In order to constantly monitor the refining process, make adjustments to
7 equipment, respond to alarms, be ready to respond immediately in the event of fire,
8 medical emergency, environmental contamination, and unit upset, and generally
9 maintain the safe and stable operation of their units, Plaintiffs and the other Operators
10 were required to remain attentive, carry radios, and be reachable at all times during their
11 shifts. Indeed, signs are posted in the processing areas stating: “refinery radios
12 required.” “Unit radios” are also specifically identified as necessary equipment in the
13 guidelines for operating procedures in the different units.

14 Plaintiffs and the other Operators were also required to remain in communication
15 with supervisors and other employees working in their units throughout their shifts.
16 This responsibility was of such importance to the role of Operator that it is specifically
17 identified in materials for operator trainees as one of 10 basic responsibilities of an
18 Operator.

19 Thus, Plaintiffs and the other Operators never received off-duty rest breaks
20 because they were constantly and continuously responsible for their units.

21 **2. Exxon’s Policies Require Operators to Be On Duty Throughout**
22 **Their Shifts and Do Not Provide Them with 10-Minute, Off-Duty**
23 **Rest Breaks.**

24 Defendants require Operators to remain on the refinery premises and in or near
25 their work areas throughout their shifts. Operators who leave their area or unit while
26 still on their shift must carry their radios, and they are not provided with any relief that
27 would allow them to take uninterrupted, off-duty rest breaks. They are not permitted to
28 do anything during their shifts that would interfere with their ability to monitor their

1 units, respond to radio calls, alarms, or unit upsets, and perform other work duties.

2 Defendants maintained refinery-wide policies that require that Operators remain
3 in radio communication at all times, remain on the refinery premises, and refrain from
4 sleeping, reading non-work-related materials, using headphones, watching movies, and
5 sleeping. The “Torrance Refinery Working Rules” issued in April 2011 identified
6 “[s]leeping, attempting to sleep, or loafing on Company time” as “neglect of duty” and
7 grounds for discharge or other discipline. *See* Renick Decl., Exhibit 2. As recently as
8 September 2018, a Head Operator was disciplined for “sleeping on duty” with a two-
9 day suspension without pay when he was attempting to take a rest break. *See* Renick
10 Decl., Exhibit 3; *see also* Renick Decl., Exhibit 4, PBF Employment Handbook, PBF
11 1971. The reason given was: “you were observed sleeping by your Supervisor while in
12 your Head Operator Office.” Renick Decl., Exhibit 3, p. 1.

13 As Defendants have no policies or practices which provide relief to Operators of
14 all their duties, Operators remain on duty throughout their shifts and do not receive
15 compliant rest breaks.

16 **C. The Parties**

17 **1. Class Representatives**

18 Plaintiffs Michelle Kendig and Jim Kendig are both currently employed by
19 Defendants as Operators at the Torrance Refinery. Plaintiff Michelle Kendig is an
20 Operator in the Tank Farm unit. She has worked at the Torrance Refinery for
21 approximately 21 years, during which time she has also worked in the unit at the
22 refinery. Since 2015, she has held the position of Head Operator. Plaintiff Jim Kendig
23 works as an Operator in the Hydrotreater unit at the Torrance Refinery. He has been an
24 Operator for approximately 25 years, during which time he has also worked in the
25 Coker and Sulfur Recovery units at the refinery.

26 Since September 18, 2014, Plaintiffs have worked their shifts without receiving
27 off-duty rest periods because throughout their shifts Plaintiffs and the other Operators are
28

1 required to monitor the refining process, respond to upsets and critical events, and
2 maintain the safe and stable operation of their units. In order to do so, Plaintiffs and the
3 other Operators are required to remain attentive, carry radios, and be reachable at all times
4 during their shifts. *Id.* at ¶ 10.

5 **2. Defendants**

6 Defendants ExxonMobil Oil Corp. and ExxonMobil Pipeline Company
7 (collectively, “Exxon Defendants”) operated refinery, distribution, and pipeline facilities
8 in or around Torrance, California (the “Torrance Refinery”) until about July 1, 2016.
9 Thereafter, Defendants PBF Energy Limited and Torrance Refining Company, LLC
10 (collectively, “TORC Defendants”) acquired the Torrance Refinery from Exxon
11 Defendants and have operated the facility since July 1, 2016.

12 **D. Discovery and Investigation Conducted by Plaintiffs**

13 Plaintiffs conducted extensive investigation of Defendant’s wage and hour
14 practices at the Torrance Refinery, particularly in regard to the provision of rest breaks.
15 Plaintiffs interviewed operators at the Torrance refinery and reviewed thousands of
16 pages of relevant written materials, including employee handbooks, training materials
17 and emergency protocol materials. In addition, Defendants provided, and Plaintiffs
18 reviewed Defendants payroll and timecard data containing all of the shifts worked by
19 each class members during the class period and the specific pay rate which applied to
20 each of those shifts. Based on this extensive investigation and review of discovered
21 materials, Plaintiffs were able to thoroughly evaluate liability and determine damages.
22 Plaintiffs’ due diligence provided a sufficient basis upon which to obtain an outstanding
23 settlement on behalf of the class. Renick Decl. at ¶ 6.

24 **E. Summary of Settlement Terms and Anticipated Schedule**

25 **1. Class Certification**

26 The settlement class stipulated to by the parties consists of the following: All
27 current and former non-exempt hourly employees holding an Operator position while
28

1 employed by ExxonMobil Oil Corporation, ExxonMobil Pipeline Company, PBF
2 Energy Limited, and/or Torrance Refining Company LLC, or any of their affiliates,
3 working at the Torrance refinery, distribution and pipeline facilities in the state of
4 California, County of Los Angeles, at any time during the time period beginning
5 September 18, 2014 and ending on the date of Preliminary Approval. Renick Decl. at ¶
6 12.

7 **2. Total Settlement Fund**

8 The total settlement amount is Four Million and Three Hundred Ninety-One
9 Thousand Five Hundred Eighty-Five Dollars (\$4,391,585). Defendants are also
10 obligated to pay their share of payroll taxes, including FICA and FUDA. The settlement
11 is non-reversionary. Uncashed settlement check(s) will be awarded *cy pres* to the
12 Loyola Law School Workers' Rights Clinic. Renick Decl., Exh. 1 at ¶ 93.

13 **3. Payment of Standard Claims**

14 The primary mechanism for Settlement involves cash payment to members of the
15 settlement class based on the number of Qualifying Shifts worked by each class member
16 during the class period. A Qualifying Shift is: (1) a shift of at least twelve (12)
17 continuous hours worked as an Operator; or (2) a shift scheduled for at least twelve (12)
18 continuous hours, worked as an Operator for a period of at least three and one-half (3½)
19 hours, and for which the class member has not previously been paid an hour of premium
20 pay for a missed or interrupted rest period for the subject workday. Renick Decl. at ¶
21 16.

22 Each participating class member will receive one Credit for each Qualifying Shift
23 worked during the class period, provided, that any class member who has worked at
24 least one (1) Qualifying Shift but no more than twenty-five (25) Qualifying Shifts will
25 receive twenty-five (25) credits. The Administrator will total up all the credits for all
26 participating class members and divide the "Net Settlement Proceeds" (i.e., the
27 Settlement Fund minus the total of (a) Court-approved Attorneys' Fees and Costs; (b)
28 Court-approved Service Awards to the Named Plaintiffs; (c) Court-approved

Administrative Costs; and (d) Payment to the LWDA for PAGA penalties the amount by that sum. The result will be a dollar value for each Credit, (the “Individual Shift Value”). Each class member’s settlement payment will be calculated by multiplying the class member’s total number of Credits by the Individual Shift Value. Renick Decl. at ¶ 16.

4. Additional Compensation for Active Litigants

In recognition of the risks and burdens undertaken by the Named Plaintiffs and those class members who actively participated in the litigation, mediation and settlement of this case, the Agreement provides additional compensation in an amount not to exceed \$7,500 for each of the two named Plaintiffs. This payment shall be in addition to whatever portion of the settlement proceeds each such individual is otherwise entitled to receive. The enhancements are intended to compensate these individuals fairly in relationship to the rest of the class in light of the additional burdens and risks they have undertaken by assisting in the prosecution of the lawsuit, including their participation in the mediation session with T. Warren Jackson in Los Angeles, California, and their active assistance with the litigation. The Named Plaintiffs have also agreed to a general release of all claims they might have against Defendants. Renick Decl., Exh. 1 at ¶ 65.

5. Attorney’s Fees and Costs

The settlement agreement provides for an award of reasonable attorney’s fees and costs from the common fund. Renick Decl. at ¶ 19. Plaintiffs intend to seek an award of 25% of the total settlement fund (or \$1,097,896) in addition to the reimbursement of litigation costs of approximately \$30,000, and the costs of claims administration, estimated at \$20,000. *Id.* at ¶¶ 19-20.

6. Payment of PAGA Claims

The total amount of the Settlement Fund allocated to PAGA penalties shall be fifty thousand dollars (\$50,000), with seventy-five percent (75%) of the PAGA penalties (\$37,500) being paid to the California Labor and Workforce Development Agency

1 (“LWDA”) and twenty-five percent (25%) of the PAGA penalties (\$12,500) being paid
2 to Settlement Class Members who do not opt out. Renick Decl., Exh. 1, at ¶ 49.

3 **7. Administration of Claims**

4 The parties have agreed to retain CAC Services Group, LLC, (“CAC” or
5 “Administrator”), of Eden Prairie, Minnesota, to act as the impartial claims
6 administrator. CAC will be retained to calculate each class member’s share, determine
7 the amount of payroll taxes owed by Defendants, send out notice to the class members,
8 maintain a website containing the key documents in the case, including the settlement
9 agreement, class notice and motion for attorney’s fees, to resolve any challenges any
10 party lodges to all or part of a particular claim, and to mail the settlement checks to the
11 authorized claimants. CAC’s fees, estimated at \$20,000, are to be paid out of the
12 settlement fund. Renick Decl., Exh. 1, ¶ 10.

13 **8. Notice to the Class**

14 The Settlement Agreement contemplates, among other things, that this Court will
15 conditionally certify a settlement class and grant preliminary approval of the settlement.
16 After preliminary approval and class certification, the Settlement Agreement requires
17 that the Notice of Class Action Settlement (“the Notice”) be sent via first class mail to
18 class members within 14 calendar days after Defendants provide to the Claims
19 Administrator a Class List with pertinent information of each potential class member.
20 The Notice will inform potential class members the terms of the Settlement Agreement,
21 their right to dispute the estimated settlement payment amount, their right to opt out of
22 the class, their right to object to the settlement, and their right to be heard at the final
23 hearing on the fairness of the settlement. Renick Decl., Exh. 1, ¶ 78. The Notice will
24 provide the address for a website maintained by the claims administrator that will have
25 links to the Notice, motions for approval and attorneys’ fees, and any other important
26 documents in the case and instructions on how to access the case docket via PACER or
27 in person at the court. Renick Decl., Exh. 1(A), p. 10.

28 Each member of the Class will be provided an individualized Notice form that

will include the number of Qualifying Shifts worked from September 18, 2014 to the preliminary approval date and the number of credits which form the basis for determining each individual claimant's share of the settlement proceeds. In addition, each Notice will also include each class member's expected share of the settlement. Renick Decl., Exh. 1(A), p. 1.

The Notice advises each class member that they have three (3) options. Those options are: (1) do nothing and receive payment; (2) request exclusion in order to be excluded from the settlement; or (3) object to the proposed settlement by filing a written objection and appearing at the Motion for Final Approval. Renick Decl., Exh. 1(A), p. 7. Additionally, the Notice explains how to file a dispute regarding the estimated settlement payment amount, the number of Qualifying Shifts, or the applicable credits. *Id.*

9. Proposed Schedule

The following schedule sets forth a proposed sequence for the relevant dates and deadlines, assuming this Court grants preliminary approval of the Settlement. This schedule is also stated in the proposed Order filed concurrently herewith.

April 27, 2020. (10 business days after Preliminary Approval):	Defendants to provide to the Claims Administrator and Class Counsel a "class list" and the following information for each Class Member: (a) name; (b) last-known address; (c) e-mail address, if available; (d) number of Qualifying Shifts worked; and (e) for the Exxon Defendants, post, as follows: (i) for the Exxon Defendants, for the period beginning September 18, 2014 and ending June 30, 2016 (the "Exxon Class Period"); and (ii) for the TORC Defendants, for the period beginning July 1, 2016 and ending on the Preliminary Approval Date (the "TORC Class Period").
May 11, 2020. (14 calendar days after Defendants provide to Claims Administrator the class list:	Class Notice mailed to all Class Members.

May 27, 2020. (14 days prior to Objection Deadline):	Plaintiffs' Motion for Attorney's Fees and Costs is Posted on Website.
June 25, 2020. (45 calendar days after Class Notice is mailed):	Last day for class members to file written objections with the Court or to opt-out of the settlement.
June 29, 2020.:	Plaintiffs to file Motion for Final Approval.
July 13, 2020, 10:00 a.m.:	Final Fairness and Motion for Fees and Costs Hearing.
July 27, 2020. (10 business days after Final Approval Order):	Defendants to provide the Social Security Number of each Participating Class Member.

III. THE PROPOSED CLASS SETTLEMENT SATISFIES ALL OF THE REQUIREMENTS FOR PRELIMINARY APPROVAL

“A presumption in favor of voluntary settlement agreements exists, and this presumption is especially strong in class actions and other complex cases . . . because they promote the amicable resolution of disputes and lighten the increasing load of litigation faced by the federal courts.” *In re Optical Disk Drive Prods. Antitrust Litig.*, No. 3:10-md-2143 RS, 2016 WL 7364803, at *4 (N.D. Cal. Dec. 19, 2016) (internal citation omitted); see also *Churchill Vill., L.L.C. v. GE*, 361 F.3d 566, 576 (9th Cir. 2004) (Strong judicial policy favors class action settlements); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1988) (the court’s role is to determine whether the settlement terms fall within a reasonable range of possible settlements, with “proper deference to the private consensual decision of the parties” to reach an agreement rather than to continue litigating).

Federal Rule of Civil Procedure 23(e) requires court approval of a class action settlement. Approval is a two-step process under Rule 23(e), “the Court first determines whether a proposed class action settlement deserves preliminary approval and then, after notice is given to class members, whether final approval is warranted.” *Noll v. eBay, Inc.*, 309 F.R.D. 593, 602 (N.D. Cal. 2015) (internal citations omitted); see also *Hanlon*, 150 F.3d at 1027 (after preliminary approval and notice to the class, the Court reviews

1 the fairness of the settlement at final approval); *Manual for Complex Litigation* (Fourth)
2 § 21.632 (explaining that courts “must make a preliminary determination on the
3 fairness, reasonableness, and adequacy of the settlement terms and must direct the
4 preparation of notice of the certification, proposed settlement, and date of the final
5 fairness hearing”).

6 Courts in the Central District of California have found preliminary approval of a
7 settlement appropriate when the settlement: (1) falls within the range of possible
8 approval; (2) appears to be the product of serious, informed, non-collusive negotiations;
9 (3) does not improperly grant preferential treatment to class representatives or segments
10 of the class; and (4) has no obvious deficiencies. *Bautista v. Harvest Mgmt. Sub LLC*,
11 No. CV1210004FMOCWX, 2013 WL 12125768, at *7 (C.D. Cal. Oct. 16, 2013)
12 (quoting *Harris v. Vector Mktg. Corp.*, No. C-08-5198 EMC, 2011 WL 1627973, at *7
13 (N.D. Cal. Apr. 29, 2011)). “Closer scrutiny is reserved for the final approval hearing.”
14 *Harris*, 2011 WL 1627973, at *7.

15 Preliminary approval is proper here because this Agreement falls within the range
16 of reasonable approval, is the product of more than six months of arms-length, non-
17 collusive negotiations by experienced class counsel, does not improperly grant
18 preferential treatment to class representatives, and has no obvious deficiencies. Renick
19 Decl. at ¶¶ 5-9.

20 **A. The Proposed Settlement Falls Within the Range of Possible Approval**

21 The recovery here is fair, reasonable, and adequate in light of the continued risk,
22 costs, and uncertainty of litigation. “In most situations, unless the settlement is clearly
23 inadequate, its acceptance and approval are preferable to lengthy and expensive
24 litigation with uncertain results.” *Nat’l Rural Telecomm. Coop. v. DirecTV, Inc.*, 221
25 F.R.D. 523, 526 (C.D. Cal. 2004) (internal citation omitted). Approval of a class
26 settlement is justified where “the settlement terms compare favorably to the
27 uncertainties associated with continued litigation regarding the contested issues in th[e]
28 case.” *Id.* at 526. See also *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615,

624 (9th Cir. 1982) (“Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and elimination of risk, the parties each give up something they might have won had they proceeded with litigation.”).

The settlement provides for the payment of \$4,391,585. Based on Plaintiffs’ assessment of damages and the review of timecard and payroll data encompassing all shifts during the class period, the settlement represents 56% of the damages incurred up to the time of the mediation. Renick Decl. at ¶ 28. This is an outstanding settlement and is above the range of reasonableness. *See Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) (finding settlement amounting to 10% of estimated damages fair and reasonable).

In addition, Class Counsel have many years of experience in class action and wage and hour law and extensive experience representing this class in wage and hour class actions against Defendants in the oil industry, including ExxonMobil.³ Class Counsel recommends the proposed settlement and believe that it is in the best interests of the Settlement Class. (Renick Decl., ¶ 29; Declaration of Joshua Young at ¶ 9). “Great weight is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation. This is because parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party’s expected outcome in the litigation. Thus, the trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel.” *DirecTV*, 221 F.R.D. at 528 (internal quotations, alterations, and citations omitted).

³ In addition to the cases mentioned earlier, Hadsell Stormer Renick & Dai and Gilbert & Sackman served as class counsel in a case involving Phillips 66 refineries in California in *United Steel v. ConocoPhillips Co.*, Central District of California Case No. 08-2068-PSG (final approval granted in 2013). Gilbert & Sackman serves as counsel to the employees’ union, the United Steelworkers. Young Decl. at ¶ **. Gilbert & Sackman also represented plaintiffs in a meal break lawsuit, *United Steel v. ExxonMobil*, Superior Court of the State of California, County of Los Angeles Case No. BC393524 (final approval granted in 2009).

1 The Settlement Agreement provides for a reasonable award of attorney's fees.
2 Plaintiffs intend to seek an award of 25% (\$1,097,896) of the settlement. The fee award
3 contemplated by the Settlement Agreement in this case is presumptively reasonable
4 under Ninth Circuit precedent. *See Resnick v. Frank (In re Online DVD-Rental*
5 *Antitrust Litig.)*, 779 F.3d 934, 949 (9th Cir. 2015) (in the Ninth Circuit, 25% is the
6 benchmark attorney's fee award in common fund cases); see also *Jones v. GN Netcom,*
7 *Inc. (In re Bluetooth Headset Prods. Liab. Litig.)*, 654 F.3d 935, 942 (9th Cir. 2011)
8 (courts typically calculate 25% of the [common] fund as the "benchmark" for a reason-
9 able fee award"). Plaintiffs expect their lodestar at the time of Final Approval to be in
10 excess of \$500,000 resulting in a multiplier of approximately 2.0. Renick Decl. at ¶ 19.
11 A multiplier of 2.0 falls within the Ninth Circuit's presumptively acceptable range of
12 1.0-4.0. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 n.6 (9th Cir. 2002); see
13 also *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014) (applying
14 2.83 multiplier); *Craft v. City of San Bernardino*, 624 F. Supp. 2d 1113, 1125 (C.D. Cal.
15 2008) (court ordered attorneys' fee of 25% of the settlement fund, where lodestar cross-
16 check showed a multiplier of 5.2).

17 For the foregoing reasons, Class Counsel strongly believe that the settlement is a
18 fair, reasonable, and an adequate resolution of the claims of the Settlement Class and is
19 preferable to continued litigation.

20 **B. The Proposed Class Settlement is the Product of Serious, Informed,**
21 **Non-Collusive, and Good-Faith Negotiations**

22 Settlement negotiations in this case were conducted over more than six months
23 and, at all times, were adversarial, non-collusive, in good faith, and at arms' length.
24 Both during and after the mediation, the Parties continued to exchange written proposals
25 and discuss settlement terms through their counsel.

26 Class Counsel worked closely with the Named Plaintiffs and other class members
27 to gain knowledge about the rest period policies and practices and the general working
28 conditions of operators at the work sites included in the proposed settlement. Class

1 Counsel sought and obtained input from the Named Plaintiffs in this case regarding the
2 terms of a proposed settlement. Renick Decl. at ¶ 27.

3 Thus, the proposed class settlement is the result of serious, informed, non-
4 collusive, and good-faith negotiations.

5 **C. The Settlement Does Not Offer Preferential Treatment to the Class**
6 **Representatives or Other Members of the Class**

7 The settlement does not offer preferential treatment to the class representatives or
8 other members of the class as the net settlement will be fairly distributed amongst the
9 class on a pro rata basis and a Credit will be given to each Qualifying Shift⁴ worked by a
10 member of the Settlement Class during the class period. Any Class Member who has at
11 least one Qualifying Shift but no more than twenty-five (25) Qualifying Shifts will be
12 rounded up to receive at least twenty-five (25) Credits. The value of each Credit, (the
13 "Individual Shift Value"), will equal the Net Settlement Proceeds divided by the total
14 number of Credits for all Class Members. Each Settlement Class Member's "Individual
15 Settlement Award" shall equal that individual's total number of Credits multiplied by
16 the Individual Shift Value. Renick Decl., Exh. "1," ¶¶ 45-61.

17 The settlement agreement authorizes an incentive award to each of the two
18 Named Plaintiffs of \$7,500. "[T]he Ninth Circuit has recognized that service awards to
19 named plaintiffs in a class action are permissible and do not render a settlement unfair
20 or unreasonable." *Harris*, 2011 WL 1627973, at *9 (citing *Staton v. Boeing Co.*, 327
21 F.3d 938, 977 (9th Cir. 2003)); *see also Resnick*, 779 F.3d at 943 ("Incentive payments
22 to class representatives do not, by themselves, create an impermissible conflict between
23 class members and their representatives."). Courts routinely approve incentive awards
24 to compensate Named Plaintiffs for the work done on behalf of the class, the risks they

25 ⁴ A Qualifying Shift is: (1) a shift of at least twelve (12) continuous hours worked as an
26 Operator; or (2) a shift scheduled for at least twelve (12) continuous hours, worked as
27 an Operator for a period of at least three and one-half (3½) hours, and for which the
28 class member has not previously been paid an hour of premium pay for a missed or
interrupted rest period for the subject workday. Renick Decl. at ¶ 16.

1 incurred during the course of the class action litigation, and sometimes, to recognize
2 their willingness to act as a private attorney general. *Resnick*, 779 F.3d at 943; *see also*
3 *Rodriguez*, 563 F.3d at 958.

4 Here, the Named Plaintiffs have participated in the successful prosecution of the
5 Class Action, including taking the risks of serving as the named representatives,
6 providing factual information and documentation necessary to the prosecution of the
7 Class Action, attending mediation, and maintaining active contact with Class Counsel.
8 In exchange for the service awards, the Named Plaintiffs have agreed to execute a
9 General Release as to any and all claims they might have against Defendants and the
10 Released Parties.

11 Moreover, the size of the incentive awards – \$7,500 to each of the two Named
12 Plaintiffs – is consistent with the range of incentive awards approved by federal courts
13 of this circuit in class action cases. *See Bellinghausen v. Tractor Supply Co.*, 306
14 F.R.D. 245, 266 (N.D. Cal. Mar. 19, 2015) (courts typically approve incentive awards
15 up to \$10,000); *see also Covillo v. Specialty's Café*, No. C-11-00594 DMR, 2014 U.S.
16 Dist. LEXIS 29837, at *28-29 (N.D. Cal. Mar. 6, 2014) (ordering an \$8,000 incentive
17 award for each of the three named plaintiffs); *Chu v. Wells Fargo Invs., LLC*, Nos. C 05-
18 4526 MHP, C 06-7924 MHP, 2011 U.S. Dist. LEXIS 15821, at *15-16 (N.D. Cal. Feb.
19 16, 2011) (awarding a \$10,000 incentive award to two named plaintiffs). Judge
20 Gonzalez Rogers approved \$7,500 incentive awards to the named plaintiffs in a similar
21 rest break case filed by Hadsell Stormer & Renick and Gilbert & Sackman against
22 Phillips 66 Company, *Buzas v. Phillips 66 Company*, Case No. 4:17-cv-00163-YGR
23 (March 6, 2018), Dkt. #47.

24 **D. The Settlement Agreement Has No Obvious Deficiencies**

25 The settlement agreement has no obvious deficiencies. As discussed throughout,
26 the recovery here, constituting 56% of the estimated damages at the time of mediation,
27 is fair, reasonable, and adequate in light of the continued risk, costs, and uncertainty of
28 litigation. The incentive awards for the two Named Plaintiffs in the amount of \$7,500

1 each are within the range of incentive awards approved by other federal courts in class
2 action cases. The attorneys' fee provision, seeking an award of 25% of the common
3 fund, is the benchmark percentage in the Ninth Circuit, and the Motion for Attorney's
4 Fees will be made available on the claims administrator's website for a reasonable
5 period of time of no less than 14 calendar days prior to the deadline for class members
6 to file an objection to the Settlement Agreement. Renick Decl. Exh. 1, ¶ 81.

7 Moreover, as discussed below, the proposed Settlement Notice and the manner of
8 notice agreed upon by the Parties is the best notice that is practicable, as required under
9 Federal Rule of Civil Procedure Rule 23(c). The proposed Notice adequately describes
10 the nature of the action, the definition of the class certified, the class claims, that a class
11 member may enter an appearance through an attorney if the member so desires, that the
12 court will exclude from the class any member who requests exclusion, the time and
13 manner for requesting exclusion, and the binding effect of a class judgment on members
14 under Rule 23(c). Renick Decl., Exh. 1(A).

15 The Settlement is non-reversionary and any uncashed checks will be awarded *cy*
16 *pres* to the Loyola Law School Workers' Rights Clinic. The Loyola Law School
17 Workers' Rights Clinic is a proper *cy pres* awardee because the nexus between the
18 Workers' Rights Clinic and the California Labor laws at issue in this case is sufficiently
19 direct. *See Dennis v. Kellogg Co.*, 697 F.3d 858, 865 (9th Cir. 2012) (a *cy pres* award
20 should be guided by (1) the objectives of the underlying statute(s) and (2) the interests
21 of the silent class members, and must not benefit a group too remote from the plaintiff
22 class). Renick Decl. ¶ 18.

23 Finally, the Settlement Agreement provides that within ten (10) days after the
24 filing of the Motion for Preliminary Approval, Defendants shall comply with the
25 "Notification of Settlement" requirements of the Class Action Fairness Act (28 U.S.C. §
26 1715). Defendants shall provide Class Counsel with a copy of the notices provided to
27 the appropriate state officials, as defined under 28 U.S.C. § 1715. Prior to the date set
28

1 for the preliminary approval hearing, Defendants shall file a proof of service with the
2 Court indicating compliance with 28 U.S.C. § 1715. Renick Decl., Exh. 1 ¶ 75.

3 **IV. CONDITIONAL CLASS CERTIFICATION IS APPROPRIATE**

4 When the parties enter into a settlement agreement before the district court
5 certifies the class, the Court, at the preliminary approval stage, “may make either a
6 preliminary determination that the proposed class action satisfies the criteria set out in
7 [Federal Rule of Civil Procedure] Rule 23 or render a final decision as to the
8 appropriateness of class certification.” *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 318
9 (C.D. Cal. 2016).

10 Conditional class certification of a settlement class is appropriate if the class
11 action meets the four prerequisites identified in Rule 23(a), numerosity, commonality,
12 typicality, and adequacy of representation, and additionally fits within one of the three
13 subdivisions of Rule 23(b). Here, Plaintiffs have provided a summary of the arguments
14 and evidence which support conditional certification of the class for purposes of
15 settlement, showing that there is numerosity, commonality, typicality, and adequacy of
16 representation, and under Rule 23(b)(3), that common questions of law and fact
17 predominate.

18 **A. The Proposed Class is so Numerous that Joinder of All Members is**
19 **Impracticable**

20 The proposed Settlement Class is defined as follows: “ All current and former
21 non-exempt hourly employees holding an Operator position while employed by
22 ExxonMobil Oil Corporation, ExxonMobil Pipeline Company, PBF Energy Limited,
23 and/or Torrance Refining Company LLC, or any of their affiliates, working at the
24 Torrance refinery, distribution and pipeline facilities in the state of California, County
25 of Los Angeles, at any time during the time period beginning September 18, 2014 and
26 ending on the date of Preliminary Approval.” Renick Decl. at ¶ 12. The Settlement
27 Class includes approximately 275 members. *Id.* The proposed class is, therefore, so
28 large that joinder is not practicable and disposition of their claims as a class will benefit

1 the parties and the Court. *See Slaven v. BP America, Inc.*, 190 F.R.D. 649, 654 (C.D.
2 Cal. 2000) (“As a general matter, courts have found that numerosity is satisfied when
3 class size exceeds 40 members. . .”).

4 **B. There are Questions of Law and Fact Common to the Class**

5 To show commonality, a plaintiff “must demonstrate that there are questions of
6 fact and law that are common to the class.” *Ellis v. Costco Wholesale Corp.*, 657 F.3d
7 970, 981 (9th Cir. 2011) (citing Fed. R. Civ. P. 23(a)(2)). “The requirements of Rule
8 23(a)(2) have been construed permissively, and all questions of fact and law need not be
9 common to satisfy the rule.” *Id.* at 981.

10 Here, Plaintiffs assert that there are common questions of fact and law arising
11 from the putative class members’ employment at Defendants’ Torrance Refinery,
12 including whether Defendants failed to authorize and permit class members to take rest
13 periods in accordance with applicable California law because they failed to relieve class
14 members during their rest periods of all work duties.

15 **C. The Claims Alleged by the Named Plaintiffs are Typical of the Claims**
16 **Which Could be Alleged by any Member of the Class**

17 “The test of typicality is whether other members have the same or similar injury,
18 whether the action is based on conduct which is not unique to the named plaintiffs, and
19 whether other class members have been injured by the same course of conduct.” *Hanon*
20 *v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992).

21 The claims alleged by the Named Plaintiffs arise out of the challenged practices
22 and common courses of conduct by Defendants and are based on the same legal theories
23 as the claims of the putative class members; thus they are typical of those claims which
24 could be alleged by any member of the proposed class. The legal issues as to which
25 California laws are violated by such conduct apply equally to Named Plaintiffs and the
26 putative class members. Further, the relief sought by Named Plaintiffs is typical of the
27 relief which would be sought by each member of the proposed class if they were to file
28 separate actions.

1 **D. The Named Plaintiffs Will Fairly and Adequately Protect the Interests**
2 **of the Class**

3 To determine whether named plaintiffs will adequately represent a class, courts
4 look to (a) whether the named plaintiffs and their counsel have any conflicts of interest
5 with other class members, and (b) whether the named plaintiffs and their counsel will
6 prosecute the action vigorously on behalf of the class. *In re Mego Fin. Corp. Sec. Litig.*,
7 213 F.3d 454, 462 (9th Cir. 2000) (citing *Hanlon*, 150 F.3d at 1020).

8 Here, Plaintiffs assert that they are proper representatives of the proposed class
9 because they will fairly and adequately represent and protect the interests of all putative
10 class members as neither the Named Plaintiffs nor their counsel have any apparent
11 conflicts of interest with the absent members of the Settlement Class and their claims
12 arise out of the same set of facts as those of the Settlement Class. The Named Plaintiffs
13 have been committed to the vigorous prosecution of this case and have reached a
14 resolution they believe is in the best interests of the Settlement Class. Moreover,
15 Plaintiffs' counsel, Hadsell Stormer Renick & Dai LLP and Gilbert & Sackman, A Law
16 Corporation, are highly experienced class counsel, having handled dozens of similar
17 wage and hour class actions, as well as other types of class and complex litigation.
18 Renick Decl. ¶ 14; Young Decl. ¶¶2-5.

19 **E. Common Questions of Law and Fact Predominate and a Class Action**
20 **is Superior**

21 Pursuant to Rule 23(b)(3), class adjudication is proper if “questions of law or fact
22 common to the members of the class predominate over any questions affecting only
23 individual members, and [] a class action is superior to other available methods for the
24 fair and efficient adjudication of the controversy.” *Sandoval v. Roadlink United States*
25 *Pac., Inc.*, No. EDCV 10-00973 VAP, 2011 WL 5443777, at *2 (C.D. Cal. Oct. 9, 2011);
26 Fed. R. Civ. P. 23(b)(3).

27 **1. Common Issues Predominate**

28 “Common issues predominate over individual issues when the common issues

1 represent a significant aspect of the case and they can be resolved for all members of the
2 class in a single adjudication.” *Edwards v. The First Am. Corp.*, 798 F.3d 1172, 1182
3 (9th Cir. 2015).

4 Under California law, an employer is required to authorize and permit all
5 employees to take duty free rest periods of 10 minutes per four hours of work or major
6 fraction thereof. Wage Order 1-2001 §12(A); see *Brinker Restaurant Corp. v. Superior*
7 *Court*, 53 Cal.4th 1004, 1032 (2012). Plaintiffs’ main claim in this case is that
8 Defendants’ lack of a rest break policy or practice that authorizes and permits duty-free
9 rest breaks and uniform failure to provide such breaks is a violation of California law.
10 This issue is suitable for class adjudication because it pertains to all members of the
11 class. See *Bradley v. Networkers Int’l, LLC*, 211 Cal. App. 4th 1129, 1150 (2012) (“The
12 lack of a meal/rest break policy and the uniform failure to authorize such breaks are
13 matters of common proof.”); *Benton v. Telecom Network Specialists, Inc.*, 220 Cal. App.
14 4th 701, 728-29 (2013) (lack of a break policy is common evidence that the employer
15 failed to provide breaks).

16 Plaintiffs assert that Defendants’ defense that they permitted employees duty-free
17 rest periods is also common to the class. See *Lubin v. Wackenhut Corp.*, 5 Cal. App. 5th
18 926, 957 (2016) (The employer’s “defense that it had a policy or practice authorizing
19 rest breaks is susceptible to classwide resolution.”).

20 **2. A Class Action is the Superior Method of Adjudication**

21 Class resolution is superior to other available methods for the fair and efficient
22 adjudication of the controversy, particularly in the settlement context. Plaintiffs assert
23 that the prosecution of separate actions by individual members of the proposed class
24 would create a risk of inconsistent and/or varying adjudications with respect to the
25 individual members of the class, establishing incompatible standards of conduct for
26 Defendants, and resulting in the impairment of putative class members’ rights and the
27 disposition of their interests through actions to which they are not parties. The
28

1 prosecution of separate actions and individualized litigation would also increase the
2 delay and expense to all parties and the court system. Furthermore, given the relatively
3 small amounts at issue, approximately \$11,500 per class member, it is unlikely that any
4 class member (especially a current employee) — acting alone — would have pursued
5 these claims against Defendants. Finally, compared with other methods, such as
6 intervention or the consolidation of individual actions, a class action is fairer and more
7 efficient.

8 **V. NOTICE TO CLASS OF FINAL APPROVAL HEARING**

9 The Court’s order preliminarily approving a class settlement must include, *inter*
10 *alia*, that notice is to be given to all class members who would be bound by the
11 settlement. Fed. R. Civ. P. 23(e)(1). “Adequate notice is critical to court approval of a
12 class settlement under Rule 23(e).” *Hanlon*, 150 F.3d at 1025. A class settlement
13 notice “is satisfactory if it generally describes the terms of the settlement in sufficient
14 detail to alert those with adverse viewpoints to investigate and to come forward and be
15 heard.” *Churchill Vill., L.L.C.*, 361 F.3d at 575 (internal quotations and citations
16 omitted).

17 **A. The Proposed Settlement Notice Contains All of the Required** 18 **Components**

19 Rule 23 requires that the content of the class notice include, in a manner that is
20 understandable to potential settlement class members: (1) the nature of the action; (2)
21 the definition of the class certified; (3) the class claims, issues, or defenses; (4) that a
22 class member may enter an appearance through an attorney if the member so desires; (5)
23 that the court will exclude from the class any member who requests exclusion; (6) the
24 time and manner for requesting exclusion; and (7) the binding effect of a class judgment
25 on members under Rule 23(c)(3). Fed. R. Civ. P. 23(c)(2)(B).

26 The proposed Settlement Notice is set forth as Exhibit A to the Settlement
27 Agreement (Exh. 1 to Renick Decl.) and provides all of the content requirements set
28 forth in Rule 23, including: (1) the nature of the litigation; (2) a description of the

1 Settlement Class; (3) the class claims; (4) that a class member may enter an appearance
2 in person or through their own attorney; (5) that a class member can request exclusion
3 from the case; (6) the process and time by which a class member must request
4 exclusion; and (7) the scope and binding effect of the judgment and release. In addition,
5 the Notice of Settlement provides the process and timing for Settlement Class members
6 to object to the proposed settlement, identifies Class Counsel, specifies the amount of
7 proposed attorneys' fees and costs that Class Counsel seek, and explains how to obtain
8 additional information regarding the settlement. Finally, as noted above, the Settlement
9 Notice will explain to Settlement Class Members how to file a dispute regarding the
10 estimated settlement payment amount, the number of Qualifying Shifts, or the
11 applicable credits.

12 **B. The Method of Notice is Appropriate**

13 The Parties have agreed to use CAC Services Group, LLC, to administer the
14 settlement. CAC will disseminate the proposed Settlement Notice, which contains all of
15 the information required under Rule 23(c)(2)(B). *See* Renick Decl. ¶ 23; Proposed
16 Settlement Notice, Exh. 1(A) to Renick Decl. CAC is an experienced and well-regarded
17 class action settlement administration. CAC's estimated compensation for the
18 settlement administration is \$20,000. These costs are reasonable and amount to less
19 than one percent of the settlement. Renick Decl. at ¶ 20.

20 The Settlement Notice and dispute form will be mailed by First Class Mail, with
21 postage prepaid, to each Settlement Class Member at his or her last-known address
22 maintained in Defendants' employment records. Any Settlement Notice returned as
23 undelivered shall be sent to the forwarding address affixed thereto, if any. If no
24 forwarding address is provided for a Settlement Notice that is returned as undelivered,
25 CAC will use a computer search method to locate a current address. If no current
26 address is located, a notice will be sent via electronic mail if an email address is
27 available for the class member. If no email address is available, the Settlement Notice
28 for that individual will be deemed undeliverable. Any amounts owed to members of the

1 class who cannot be located will be awarded *cy pres* to the Loyola Law School
2 Workers' Rights Clinic.

3 The Settlement Agreement provides the following method for Notice to be
4 provided to the Settlement Class Members: Within 10 business days following receipt
5 of the order from this Court granting preliminary approval, Defendant will provide the
6 Claims Administrator, CAC, with information regarding class members. Within 14
7 calendar days after receiving the above information from Defendants, the Claims
8 Administrator will mail, by first-class U.S. mail, the Notice to all class members.
9 Before the mailing, the Administrator will run the addresses through the U.S. Postal
10 Service's Change of Address Database. All Class Members who do not file a timely
11 Request for Exclusion will participate in the allocation of the Settlement and will be
12 sent a check for their share of the Settlement. Renick Decl. at ¶ 26.

13 **VI. CONCLUSION**

14 For the foregoing reasons, Plaintiffs respectfully request that the Court
15 preliminarily approve the class settlement, conditionally certify the proposed settlement
16 class, and enter the order submitted concurrently herewith.

17 DATED: March 16, 2020

Respectfully submitted,

18 HADSELL STORMER RENICK & DAI LLP

19 /s/Randy Renick

20 Randy Renick

21 Attorneys for Plaintiffs Michelle Kendig and Jim
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24 /s/Joshua F. Young

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26 Attorneys for Plaintiffs Michelle Kendig and Jim
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